

1 Paul J. Riehle (SBN 115199)  
paul.riehle@faegredrinker.com  
2 **FAEGRE DRINKER BIDDLE & REATH LLP**  
Four Embarcadero Center  
3 San Francisco, California 94111  
Telephone: (415) 591-7500  
4

Gary A. Bornstein (*pro hac vice*)  
5 gbornstein@cravath.com  
**CRAVATH, SWAINE & MOORE LLP**  
6 375 Ninth Avenue  
New York, New York 10001  
7 Telephone: (212) 474-1000

8 *Counsel for Plaintiff Epic Games, Inc.*

9  
10 *Additional counsel appear on signature page*

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 IN RE GOOGLE PLAY STORE ANTITRUST  
16 LITIGATION

Case No. 3:21-md-02981-JD

17 THIS DOCUMENT RELATES TO:

**STATEMENT RE EPIC'S ILLEGALITY  
DEFENSE**

18 *Epic Games, Inc. v. Google LLC et al.*,  
19 Case No. 3:20-cv-05671-JD

1 WHEREAS, Epic Games, Inc. (“Epic”) brought this action alleging, among other  
2 things, that the provisions of Google’s Developer Distribution Agreement (“DDA”), including the  
3 Developer Program Policies integrated into the DDA, requiring that apps distributed on the Google  
4 Play Store use Google Play Billing as the payment solution for handling any in-app purchases  
5 violate Sections 1 and 2 of the Sherman Act, California’s Cartwright Act and California’s Unfair  
6 Competition Law;

7 WHEREAS, Google brought a counterclaim against Epic alleging breach of the  
8 challenged provisions of the DDA;

9 WHEREAS, Epic acknowledged that it had not complied with the challenged  
10 provisions of the DDA but denied Google’s claim of breach because of the unlawfulness of those  
11 provisions;

12 WHEREAS, the parties agreed that, as a result of Epic’s non-compliance with the  
13 challenged provisions of the DDA, Epic did not pay Google \$398,931.23 in fees that Google would  
14 otherwise have received (*see* Dkt. 850 at 5);

15 WHEREAS, following trial, a jury found the challenged provisions of the DDA to  
16 be unlawful;

17 WHEREAS, Epic contends that the unlawfulness of the challenged provisions of the  
18 DDA is a complete defense to Google’s claim of breach, such that Epic is not required to pay  
19 Google anything on that claim (*see* Dkt. 393 at 17-18; Dkt. 641 at 10);

20 WHEREAS, at a hearing on August 14, 2024, the Court inquired whether Epic  
21 wished to have the Court adjudicate Epic’s illegality defense (*see* Dkt. 1000 at 150:20-151:23); and

22 WHEREAS, Epic recognizes that adjudication of the illegality defense would delay  
23 the entry of a final judgment in this matter and, therefore, delay the implementation of remedies for  
24 Google’s multiple violations of law;

25 Epic states that, to expedite the implementation of remedies for the benefit of all  
26 market participants, and without prejudice to the validity of its illegality defense, Epic will forgo  
27 adjudication of that defense and voluntarily pay Google the sum of \$398,931.23, within ten days of  
28

1 entry of final judgment in this matter, on the understanding that such payment will fully resolve all  
2 counterclaims brought by Google against Epic.

1 Dated: August 19, 2024

2 FAEGRE DRINKER BIDDLE & REATH LLP  
3 Paul J. Riehle (SBN 115199)

4 CRAVATH, SWAINE & MOORE LLP  
5 Gary A. Bornstein (*pro hac vice*)  
6 Timothy G. Cameron (*pro hac vice*)  
7 Yonatan Even (*pro hac vice*)  
8 Lauren A. Moskowitz (*pro hac vice*)  
9 Justin C. Clarke (*pro hac vice*)  
10 Michael J. Zaken (*pro hac vice*)  
11 M. Brent Byars (*pro hac vice*)

12 Respectfully submitted,

13 By: /s/ Gary A. Bornstein  
14 Gary A. Bornstein

15 *Counsel for Plaintiff Epic Games, Inc.*